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December 15, 2006

BY HAND DELIVERY

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5848

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2006 DEC 18 A 10:16

Dear Mr. Norton:

On behalf of Senator Harry Reid, Friends for Harry Reid, and Cliff Beadle, as treasurer (collectively, the "Committee"), this letter is submitted in response to the complaint filed by Michael Boos of Citizens United (the "Complaint") and subsequently labeled MUR 5848. The Complaint is without merit and should be dismissed immediately.

The Complaint centers on disbursements made by the Committee in 2002, 2004, and 2005 for the REC Employee Holiday Fund, which collects money for Christmas gifts, bonuses and a party for support staff at the Ritz-Carlton. Senator Reid resides at a condominium in the Ritz-Carlton when he is in Washington. The Committee made these disbursements after consulting with its lawyer, William Oldaker, an experienced campaign finance lawyer and former General Counsel of the Commission. As explained by Senator Reid, "These donations were made to thank the men and women who work in the building for the extra work they do as a result of my political activities, and for helping the security officers assigned to me because of my Senate position." J. Solomon, "Reid Used Campaign Money for Bonuses," *Associated Press*, October 17, 2006.

The Complaint contains a number of distortions of the law, designed to manipulate these innocuous underlying facts for political purposes. First and foremost, the assertion that the Committee's payments to an Employee Holiday Fund "may well qualify as per se

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violations of the personal use prohibitions do [sic] to their direct relationship to Senator Reid's use of the Ritz-Carlton condominium as his personal residence" is simply false. The Complaint attempts to equate the personal obligation to pay a mortgage, or rent or utility bills with donations made to a group of individuals who have provided helpful service when extra needs arose relating to Senator Reid's work. There is no support in the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations for the Complaint's allegations.

The Act and Commission regulations contain restrictions on "personal use" of campaign funds, with specific examples and exemptions. See 2 U.S.C. § 439a and 11 C.F.R. § 113.1. "Personal use" is generally defined as any use of campaign funds to fulfill a "commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder." 11 C.F.R. § 113.1(g). Examples of such commitments, obligations or expenses are mortgage, rent or utility payments. 11 C.F.R. 113.1 § (g)(1)(i)(E). Excluded from "personal use" are "[g]ifts of nominal value and donations of a nominal amount made on a special occasion such as a holiday . . . unless made to a member of the candidate's family." 11 C.F.R. 113.1 § (g)(4). Other expenses are treated on a case-by-case basis. 11 C.F.R. 113.1 § (g)(1)(ii).

The Act and Commission regulations do not contain a presumption that when a campaign-related expense of whatever kind is incurred on or near the premises of a candidate's personal residence, the expense is *per se* personal use. The complainant appears to operate under the unrealistic assumption that Senator Reid can keep all campaign-related and officeholder-related duties from spilling over after hours. With the demands on federal officeholders' time only likely to increase with the upcoming Congress, this trend will only continue, and the Act and Commission regulations are sensibly designed to permit campaign funds to express goodwill and appreciation for extra services performed when Senator Reid's work requires it. See 2 U.S.C. § 439a.

The Complaint incorrectly states that the payments at issue "also fall well outside the scope of the regulation that allows the use of campaign funds to make gifts and donations 'of nominal value' on a special occasions such as a holiday, graduation, marriage, retirement or death. See 11 CFR § 113.1(g)(4)." Complaint at 5. Since the Complaint acknowledges that the Commission permits campaign funds to be used for small gifts on special occasions as gestures of good will, the Complaint instead tries to focus on the "nominal value" requirement as a means of distinguishing the payments at issue. Unquestionably, if the Ritz-Carlton were staffed by only a handful of individuals, the payment of \$600, or \$1200, or \$1500, would not be nominal. However, it is

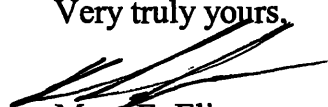
preposterous to pretend that the Ritz-Carlton's Employee Holiday Fund goes to only a few individuals. The Committee has not asked the Ritz-Carlton for its employee roster, but the Committee is quite confident that the high quality, round-the-clock service provided by Ritz-Carlton is accomplished with the hard work of many employees, all of whom the Employee Holiday Fund is designed to benefit. The Complaint's argument about "nominal value" would only make sense if the Ritz-Carlton had a small payroll or did not widely distribute its Employee Holiday Fund – neither of which, to the Committee's knowledge, are the case.

Finally, the Complaint tries to take issue with the Committee's assistant treasurers and their choice of words to describe the disbursements to the REC Employee Holiday Fund. As the payments were gestures of goodwill to the many individuals who provided services required to meet the work-related demands placed on Senator Reid, the commonly used terms "contribution" and "salary" for the "purpose" section in FEC reports were not unreasonable choices to have made when these individuals were preparing these reports, and were certainly not intended to be misleading in any way. To describe the FEC reports as "false and misleading" is absurd.

Even if the Commission were to conclude that there was even the slightest merit to the Complaint – which the Committee strongly believes there is not – the Commission should nonetheless exercise its prosecutorial discretion and dismiss this Complaint immediately. *See Heckler v. Chaney*, 470 U.S. 821 (1985). As reported by the Associated Press on October 17, 2006, Senator Reid has already personally reimbursed the Committee for the \$3300 at issue to prevent this issue from being used as a distraction during the 2006 elections.

Thank you for your attention to this matter.

Very truly yours,



Marc E. Elias
Counsel to the Committee